IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL, CIVIL JURISDICTION

WRIT **PETITION NO.1180 OF 2006**

Sandip P.Gophane & Ors...Petitioners

Vs.

Maharashtra University of

Health Science & Ors.....Respondents

Mr.M.M. Vashi, for the Petitioners

Mr.R.V.Govilkar, for Respondent No.2.

Mr. A.S. Khandeparkar i/b. Mukesh Subramanian

for Respondent No.3.

CORAM: **F.I. REBELLO &**

MRS.V.K.TAHILRAMANI, JJ.

DATE: 7th July,2006

P.C.

. Petitioners are students pursuing their studies in a degree course Bachelor of Dental Surgery. By the present petition the petitioners are challenging the verification of the results communicated vide letter dated 3rd March, 2006 and also praying for revaluation of the written material of practical examination or to hold a fresh practical examination in the two subjects viz. Conservative Dentistry and Pedodontics, etc. The petitioners appeared for the practical examinations which were held for the aforesaid subjects on 6th and 7th

January, 2006. The results were declared on 8th February, 2006 and it was found that the petitioners had failed in the practicals of two subjects. Though they had applied for verification of the marks they were intimated that there was no change. Their main contention is that the respondent No.3 had openly threatened that Respondent No.3 would give 50% result in the petitioners batch and that was put into action by the 3rd respondent by failing 5 out of 9 students. Though there were external examiners as the 2nd and 3rd respondents were seniors to the external examiners they have prevailed on the external examiners to change the marks and failed the petitioners. The respondent No.2, it is pointed out, is a Professor of Conservative Dentistry. Inspite of that he was present most of the time in practical examination of Pedodontics. In terms of the Rules framed by the University at the time of holding practical examination except the professor in the subject of examination and the external examiner no other person can remain present. The 2nd respondent remained present and pointed out the petitioners to the 3rd respondent so that the petitioners can be failed. It is also pointed out that one Dr. Vatsala K. Shetty had filed a Writ Petition against respondent No.2 wherein certain directions had been issued amongst others to direct respondent No.2 should not be in charge of the department of Conservative Dentistry as allegations of sexual

harassment were found to be correct. It is pointed out that till respondent No.3 was not the internal examiner the students were getting correct marks. After 3rd respondent became internal examiner a large number of students failed which has only been done to keep fear amongst the students. It is pointed out that 2nd and 3rd respondent are in the habit of taking expensive gifts from the students who have been passed by respondent Nos. 2 and 3. There are some other averments that some students though had not fared properly yet declared to be passed. That written complaint had been given by the petitioners on 16th February, 2006 to the Controller of Examinations and Vice Chancellor. It is also set out that petitioner Nos. 2 and 3 were sexually harassed by 2nd Respondent. It is also set out that 2nd respondent had suspected that petitioner Nos. 2 and 3 were on the side of Dr.Vatsala Shetty and had been warned not to support Dr.Vatsala Shetty. It is in these circumstances that the petitioners prayed for holding fresh examinations and the other reliefs as prayed for.

2. A reply has been filed by both respondent Nos.2 and 3 denying the allegations. It is pointed out that performance of the candidates is to be judged by both external and internal examiners and marks have been awarded. Dr.K.S. Banga in his reply points out that he is in teaching profession since

March, 1990 first as a full time lecturer and now as Associate Professor. He has been an examiner in concerned subject since 1993 and had conducted both BDS and MDS examinations in various universities other than respondent No.1. That respondent No.2 was also appointed as convener for ad-hoc Board of Studies in Clinical Dentistry for three years by the Mumbai University in 2000 and he was also appointed as Chairman, Board of studies in Clinical Dentistry. Respondent No.2 also points out that his co-examiner was Dr. Anjali Gandhi from SMBT Dental College, Sangamner, Maharashtra. The examination was held for one day only on 6th January, 2006 and the results were finalised, sealed and submitted on the same day in the presence of his External Examiner. It is pointed out that the petitioner Nos. 2 and 3 had secured 50% marks in the practical examinations and have passed in the head of practical examination. Respondent No.2 has denied that he was present when the practical examination in Conservative Dentistry and Pedodontics was being conducted. It is pointed out that every attempt is being made to paint respondent No.2 in a bad image.

3. Respondent No.4 in his affidavit has also denied the allegations that when the examination was held on 7th January, 2006 and the results were declared on 8th February, 2006, no complaint of whatsoever nature had been lodged by the petitioners

in any manner as now set out in the petition. It is pointed out that he has conducted several examination for 8 to 9 years. He has specifically denied that he has accepted any gift or articles from any students or persons.

4. On behalf of the University a reply has been filed by Govind Prabhakar Jadhav. It is pointed out that the reliefs as prayed for cannot be granted. In so far as moderation is concerned, the University has formed the procedure for moderation. The examinations were conducted on 6th and 7th January, 2006. No complaints were filed and objections were raised at the time of examination as well as after the examination is over and have been filed only after the results were declared. Results of the candidates were based on the performance judged by both the external and internal examiners. It is pointed out that through respondent Nos. 3 and 4 are experienced recognised teachers and have been acting as examiners for quite a long time and are on the approved list of teachers and the allegations made against them are apparently baseless. It is specifically pointed out that though the petitioners have now made allegations of extortion of moneys and gifts from the students no such allegations or complaints are made to any other appropriate authorities. The complaints were not made at right time, and were vague. The case of Dr. Vatsala

Shetty has been explained. It is pointed out that they received the complaint on 16th February, 2006. Whenever any complaint of any malpractice in the conduct of the examination is received the matter is referred to the Unfair Means Enquiry Committee for enquiry and recommendations to the Board of Examinations, who thereafter take appropriate action. If in the meanwhile the matter is likely to affect the results of the examination the results of the concerned students are kept reserved until final decision is taken. It is pointed out that the complaint in the instant case was lodged after the declaration of the results of the petitioners and without any substantial proof.

. A rejoinder has been filed on behalf of the petitioners. Dr. Banga has field additional affidavit to meet the allegations and certain averments as set out in the earlier affidavit.

5. We have heard learned Counsel for the parties and also called for the results of the examination of both external and internal examiners. We find from the results, that the practice is that common marks are given both by external and internal examiners. The material on record would not indicate that this Court can grant any reliefs as prayed for.

. The petitioner Nos.2 and 3 have sought to

make serious allegations against Respondent No.2 of sexual misconduct. It is pointed out that though petitioner Nos. 2 and 3 had secured 50% marks in practical examinations. Respondent No.2 has pointed out that both Respondent Nos. 2 and 2 have have secured 50% marks in practical examinations.

6. We may note that the allegation of sexual misconduct as now raised was not the subject matter of any complaint by petitioner Nos.2 and 3 earlier. It is sought to be contended that as petitioners 2 and 3 were students they were afraid of making allegations. We are afraid that it is not possible to accept such vague and belated charges at this stage. If Courts start accepting such vague allegations no teacher would be in a position to independently discharge his duties. At the same time we do understand, that if there are allegations they must be enquired into. According to the University the allegations made were vague and not supported by any material.

. However, if there be any material, it will be open to the petitioners to place the same before the Vice Chancellor, who will accordingly take steps if prima facie that material can be said to be material which could be considered.

7. At any rate we do not think this to be a a

fit case where we should exercise our extra ordinary jurisdiction. Hence petition rejected.

(**F.I. REBELLO, J)**

(**MRS.V.K.TAHILRAMANI, J).**